

By signing the Business Application Form, the Customer agrees to and is bound by these Conditions. Bord na Móna Recycling reserves the right, without agreement or notice, to amend these Conditions from time to time. Any amendment to these Conditions will take effect and will bind the Customer three days after notice of the amendment has been sent to the Customer. A copy of the most recent Conditions is available on request in writing to Bord na Móna Recycling or on [www.bnmrecycling.ie](http://www.bnmrecycling.ie).

**1. DEFINITIONS**

In these Conditions:-

**"Business Application Form"** means the note of Customer details and other particulars in the form prescribed by Bord na Móna Recycling signed on behalf of the Customer and marked with the heading "BUSINESS APPLICATION FORM".

**"Bord na Móna Recycling"** means BORD NA MÓNA RECYCLING LIMITED, registered in Ireland no. 224173, whose registered office is at Bord na Móna Offices, Main Street, Newbridge, County Kildare and shall be deemed to include all affiliates and sub-contractors of Bord na Móna Recycling to whom Bord na Móna Recycling sub-contracts the provision of any of the Services hereunder.

**"Commencement Date"** shall be the earlier of the date stated on the Business Application Form or the date on which the first piece of Equipment is delivered to the Customer.

**"Conditions"** means these conditions of service and any amendments, alterations or revisions made to them after the date hereof.

**"Credit Limit"** means the Euro amount which is the maximum amount the Customer may have outstanding to Bord na Móna Recycling at any time during the Term:

**"Contract"** means the Business Application Form together with the Conditions.

**"Customer"** means any person, firm, Company, unincorporated association or sole trader to whom Bord na Móna Recycling is providing the Services.

**"Equipment"** means the equipment specified in the Business Application Form provided by or on behalf of Bord na Móna Recycling for the collection of Waste Material, Organic Material, Recyclable Material or any substituted equipment for such equipment and any additional equipment supplied for such purposes from time to time to the Customer by or on behalf of Bord na Móna Recycling.

**"Invoice"** means the Invoice given or dispatched to the Customer detailing the Equipment and the Price:

**"Materials"** shall mean the collective term used for Organic Material, Recyclable Material and Waste Material:

**"Organic Material"** shall mean the materials indicated as being suitable for disposal in Bord na Móna Recycling "organic" Equipment, as Bord na Móna Recycling may provide from time to time and detailed in notices sent by Bord na Móna Recycling directly to Customers from time to time and destined for recovery.

**"Price"** means the price, plus any surcharges which may be applied in accordance with clause 8.7 that the Customer shall pay for the Services being the price, exclusive of VAT, indicated on the Business Application Form or as notified to the Customer in writing by Bord na Móna Recycling.

**"Recyclable Material"** shall mean the materials indicated as being suitable for disposal in Bord na Móna Recycling Equipment as Bord na Móna Recycling may provide from time to time, and detailed in notices sent by Bord na Móna Recycling directly to Customers from time to time and destined for recycling or recovery.

**"Bord na Móna Recycling Waste Management I.T. System"** means the apparatus used by Bord na Móna Recycling to calculate the weight of any Materials loaded into/onto Bord na Móna Recycling servicing vehicles:

**"Services"** means:-

**1.1.1** the supply of the Equipment for use by the Customer at the Site:

**1.1.2** the collection and disposal of the Materials; and

**1.1.3** any additional services expressly agreed in the Business Application Form:

**"Sites"** shall mean the collection address/s supplied by the Customer in the Business Application Form, where the Equipment and/or Materials are to be collected by Bord na Móna Recycling:

**"Term"** shall mean the period of one year from the Commencement Date, unless indicated otherwise on the Business Application Form: and

**"Waste Material"** shall mean all waste material suitable for disposal in Bord na Móna Recycling Equipment (but excluding Recyclable Material, Organic Material) and shall not include hazardous or toxic waste, unless otherwise agreed in writing in advance with Bord na Móna Recycling, (including but not limited to: liquid waste, car tyres, paint tins, plasterboard, dead animals, electrical appliances, batteries, carbon wastes and fluorescent bulbs) and produced at the Site and placed in the Equipment provided for this purpose by or on behalf of Bord na Móna Recycling and destined for disposal.

**2. SUPPLY OF SERVICES**

**2.1** Bord na Móna Recycling agrees to provide the Services set out in the Business Application Form in a proper and efficient manner.

**2.2** Bord na Móna Recycling shall have the right to make reasonable changes to times and dates for collection of Materials to meet operational and regulatory requirements and where possible Bord na Móna Recycling shall give prior notification of such changes to the Customer.

**2.3** If the Service is not carried out on the collection day agreed with the Customer, Bord na Móna Recycling reserves the right to reschedule the visit to the next reasonable opportunity for such Service and no claim shall lie against Bord na Móna Recycling by the Customer in this respect.

**2.4** Bord na Móna Recycling has the right to sub-contract the provision of any of the Services hereunder.

**2.5** Notwithstanding the provisions of clause 5.2 Bord na Móna Recycling shall repair damage caused to the Equipment through reasonable wear and tear.

**3. DELIVERY OF EQUIPMENT AND RISK**

**3.1** Bord na Móna Recycling shall, so far as practicable, notify the approximate date of delivery of the Equipment. Unless otherwise agreed with the Customer, Bord na Móna Recycling shall effect delivery of the Equipment at the Site.

**3.2** Bord na Móna Recycling at all times reserves the right to refuse delivery of the Equipment to any particular location where in the opinion of Bord na Móna Recycling, a danger or risk will be created thereby, being in particular, a risk of danger or injury to third parties.

**3.3** Bord na Móna Recycling reserves the right to refuse delivery to any location or Site where such a delivery would be contrary to any law or by-law in force. It is the Customer's obligation to ensure that all necessary consents from town, city or County Councils for delivery of the Equipment at the Site have been obtained. Bord na Móna Recycling shall have no liability or obligations with regard to obtaining consents from the relevant authorities.

**3.4** Delivery of the Equipment shall take place when the Equipment comes within the possession or control (actual or constructive) of the Customer.

**3.5** Risk in the Equipment shall pass to the Customer immediately the Equipment is delivered to the Customer, notwithstanding any failure by the Customer to endorse its acceptance. Bord na Móna Recycling shall not have any responsibility in respect of the safety of the Equipment thereafter, notwithstanding that the ownership of the Equipment shall not have passed to the Customer. Equipment damaged by the Customer, its servants or agents whilst loading and unloading Materials are the responsibility of the Customer.

**4. OBLIGATIONS OF THE CUSTOMER**

**4.1** The Customer Shall ensure that:

**4.1.1** when they want the Equipment to be emptied the Equipment is left in an accessible and safe place on the collection date agreed in advance with Bord na Móna Recycling

**4.1.2** the appropriate Equipment is used only for the disposal of the appropriate Materials:

**4.1.3** any Material that has the potential to be carried by wind is covered or secured within the Equipment:

**4.1.4** they take all reasonable care of the Equipment in their custody, and shall be liable for any damage, howsoever caused to or by the Equipment arising from the neglect or default of the Customer to their agents:

**4.1.5** the Equipment is kept in a safe place, away from third party interference;

**4.1.6** Materials are not compacted into the Equipment with the aid of mechanical pneumatic, (or any other), compaction devices, except those provided by Bord na Móna Recycling, for the avoidance of doubt, Bord na Móna Recycling reserves the right to charge the Customer for any damage caused to the Equipment by the Customer's use of a mechanical pneumatic, (or any other) compaction devices, (whether supplied or not by Bord na Móna Recycling) to fill the Equipment

**4.1.7** They comply with all relevant legal requirements in connection with the storage and accumulation of and any relevant treatment of Materials on the Sites.

**4.1.8** All packaging waste to be collected for disposal by Bord na Móna Recycling will be presented in compliance with Article 5 of Part II of the Waste Management (Packaging) Regulations 2003.

**4.1.9** All Materials to be collected are segregated correctly, securely deposited in the appropriate piece of Equipment and that there shall be no obligation upon Bord na Móna Recycling to collect any Material that is loose, or not contained in the appropriate Equipment, and

**4.1.10** Wheelee bin Equipment is not filled beyond the relevant weight restriction imposed for the relevant wheelee bin Equipment as specified in the table below:

| Wheelee Bin | Maximum Weight |
|-------------|----------------|
| 140Ltr      | 40Kgs          |
| 240Ltr      | 60Kgs          |
| 360Ltr      | 70Kgs          |
| 660Ltr      | 85Kgs          |
| 1100Ltr     | 120Kgs         |

**4.2** For the avoidance of doubt, Bord na Móna Recycling shall not be obliged to pick up wheelee bin Equipment that exceeds the weights specified in the table at 4.1.10.

**4.3** The Customer shall have the option, in circumstances where the Equipment is overweight or overfull, to either remove sufficient Materials so that the Equipment is no longer overweight or overfull (as the case may be) or order another piece of Equipment, of an appropriate size, to extract sufficient Materials from the Equipment so that neither piece of Equipment is overweight or over full. The Customer shall be liable for the additional costs involved in hiring addition Equipment and shall be responsible for any movement of Material from one piece of Equipment to another.

**4.4** The Customer hereby agrees that Bord na Móna Recycling shall be their Sole Service provider during the Term (or any extended Term).

**4.5** Notwithstanding the provision of clause 4.5, the Customer hereby agrees that if during the Term (or any extended Term) an alternative waste material not specified in the Business Application Form requires treatment or disposal or the Customer decides to treat or dispose of Materials themselves they shall in the first instance notify Bord na Móna Recycling.

**5. THE EQUIPMENT**

**5.1** The Customer shall be wholly responsible for the safety of employees of the Customer, of Bord na Móna Recycling and any third parties in relation to the presence of the Equipment upon the Site. The Customer shall carry out a proper and sufficient risk assessment relating to the delivery, presence and use of the Equipment on the Site and for its removal from the Site by Bord na Móna Recycling. The Customer shall supply a copy of same to Bord na Móna Recycling and communicate such risk assessment to all relevant employees of the Customer. The Customer shall inform Bord na Móna Recycling if any individual is injured in connection with the use of the Equipment or, if an any reportable incident takes place involving the Equipment or its use.

**5.2** The Customer shall immediately inform Bord na Móna Recycling upon becoming aware that any of the Equipment is unsafe or not in working order and shall cease to use such Equipment until Bord na Móna Recycling has had the opportunity to inspect it and if necessary replace it. The cost of any damage to the Equipment (normal wear and tear excepted) shall be met by and invoiced to the Customer.

**5.3** Bord na Móna Recycling may at its discretion replace any of the Equipment at any time while this Contract subsists with other Equipment of a similar standard and specification.

**5.4** The Customer shall not place any names, notices or labels on the Equipment.

**5.5** The Customer hereby grants Bord na Móna Recycling a licence to enter and remain on the Customer's Site solely to the extent necessary to perform the Services.

**6. FORCE MAJEURE**

**6.1** Should Bord na Móna Recycling be delayed in or prevented from making delivery of the Equipment or providing the Services due to war, strikes, lock-outs, fire, floods, explosion, labour disturbances, trade disputes or shortages in raw material or due to any other cause whatsoever beyond the control of Bord na Móna Recycling, Bord na Móna Recycling shall be at liberty (in its sole discretion) to cancel or suspend the Contract without incurring any liability for any loss or damage arising therefrom (whether in contract, negligence in Tort otherwise).

**7. TITLE TO THE EQUIPMENT**

**7.1** Notwithstanding delivery and passing of risk in the Equipment, or any other provision of these Conditions, title to the Equipment shall not pass to the Customer and the Equipment shall at all times remain the property of Bord na Móna Recycling.

**7.2** Bord na Móna Recycling may take possession of the Equipment, at any time. For this purpose Bord na Móna Recycling may visit (and Bord na Móna Recycling and its authorised agents are hereby authorised to enter) any premises of the Customer or a third party where the Equipment is kept for the purpose of taking possession of the Equipment.

**8. PRICE AND PAYMENT**

**8.1** Customer shall be assigned a Credit Limit by Bord na Móna Recycling which shall not be exceeded by the Customer, Bord na Móna Recycling may in its absolute discretion change, vary or amend the Customer's Credit Limit.

**8.2** Bord na Móna Recycling reserves the right to amend the Price during the course of the Contract. The Price quoted to the Customer is subject to change in line with Bord na Móna Recycling pricing review.

**8.3** Bord na Móna Recycling will invoice Customers in accordance with its current invoicing policy, as agreed in advance with the Customer.

**8.4** Unless otherwise agreed in writing between Bord na Móna Recycling and the Customer the Price shall be payable 30 days from invoicing by Bord na Móna Recycling to the Customer, (the "Due Date").

**8.5** Bord na Móna Recycling reserves the right to charge interest on overdue accounts of 15% per month. If the Price is not paid in full by the Due Date, the Customer shall reimburse Bord na Móna Recycling (on a full indemnity basis) for all costs and expenses incurred by Bord na Móna Recycling in connection with the recovery of any monies due to Bord na Móna Recycling.

**8.6** All prices quoted are exclusive of Value Added Tax and any other taxes payable for the Services which will be payable in addition by the Customer at the appropriate prevailing rate stated on the Invoice.

**8.7** Bord na Móna Recycling reserves the right to levy Customers a weight surcharge where Equipment is overweight.

**8.7.1** In the first instance, the Bord na Móna Recycling Waste Management I.T. System shall calculate the overall weight of the Equipment and subtract the over-weight portion of the Materials.

**8.7.2** The weight surcharge payable by the Customer in respect of overweight bins shall be calculated by reference to the portion of Materials overfilled plus the cost associated with the collection, treatment and disposal of that portion of the Materials.

**8.7.3** The Customer hereby agrees that the reading from the Bord na Móna Recycling Waste Management I.T. System shall be conclusive prove of the weight recorded thereon.

**8.8** The Customer shall make all payments, without set-off or counterclaim and free and clear of all taxes, deductions, withholdings and other charges.

**8.9** Payments made by the Customer to Bord na Móna Recycling shall be applied by Bord na Móna Recycling to Invoices, and to Equipment listed in Invoices, in such manner as Bord na Móna Recycling shall at its sole discretion think fit.

**8.10** It is hereby expressly agreed that, if the Customer does not pay an Invoice on or before the Due Date, this shall be considered a fundamental breach of the terms of the Contract and Bord na Móna Recycling may, at its option, either suspend all further Services to be provided to the Customer until such Invoice has been paid or cancel the Contract altogether.

**9. INDEMNITY**

**9.1** The Customer shall indemnify Bord na Móna Recycling in respect of all loss, damage or injury occurring to any person, firm, Company or property, and against all action, suits, claims and demands, charges or expenses (including legal expenses) in connection therewith for which Bord na Móna Recycling may become liable in respect of the Equipment and the Material in the event that such loss, damage, or injury shall have been occasioned by the negligence, misuse of Equipment, breach of duty or breach of the terms of the Contract by the Customer.

**9.2** Bord na Móna Recycling shall not be liable for any damage to surfaces, manholes, walls or property, caused by Bord na Móna Recycling vehicles or Equipment while on the Customer's premises and the Customer will indemnify Bord na Móna Recycling in respect of all actions, suits, claims and demands, charges or expenses (including legal expenses) in connection therewith by a Third Party for loss or damage resulting as aforesaid.

**9.3** The Customer hereby agrees to take out and maintain suitable and adequate Insurance cover for the duration of the Contract, which shall contain an indemnity to principles clause, with an insurance office of repute:

**a)** To cover the liability accepted by it in this Contract; and  
**b)** To include appropriate public liability Insurance. The Customer hereby agrees to produce at Bord na Móna Recycling/ request a copy of the Insurance policy or policies and relevant Renewal receipts for inspection by Bord na Móna Recycling.

**10. SET-OFF**

**10.1** Whenever under a Contract any sum of money shall be recoverable from or payable by the Customer to Bord na Móna Recycling, the same amount may be deducted from any sum due or which may at any time thereafter may become due to the Customer and Bord na Móna Recycling or any company within the Bord na Móna group of companies. Nothing in this clause shall prejudice any other rights or remedies available to Bord na Móna Recycling under the Contract or at law.

**11. LIABILITY**

**11.1** Bord na Móna Recycling' total liability under or in connection with the Contract (whether in contract, tort (including negligence) or otherwise) shall not exceed in aggregate the total fees for Services received by Bord na Móna Recycling from the Customer during the previous twelve (12) months.

**11.2** Bord na Móna Recycling shall not under any circumstances be liable to the Customer by reason of any representation or warranty, condition or other term or any duty of common law, or under the express terms of these Conditions, for any consequential, special, incidental or punitive loss or damage (whether for loss of current or future profits, loss of enterprise value or otherwise) and whether occasioned by the negligence of Bord na Móna Recycling, its employees or agents or otherwise, even if advised of the possibility of such damages.

**11.3** Nothing in these Conditions shall exclude or limit the liability of Bord na Móna Recycling for death or personal injury resulting from the negligence of Bord na Móna Recycling or any of its employees or agents, nor shall they operate to exclude or limit any statutory rights which cannot be legally excluded or limited, including the statutory rights of a consumer.

**12. DISPUTE RESOLUTION**

**12.1** Despite the existence of a dispute or difference, the parties will continue to perform their obligations under this Contract in good faith. If any dispute or difference arises between the parties, the parties will first make every effort to settle the dispute amicably and any dispute or difference is to be notified in writing by the account manager in one party to the account manager of the other party (if applicable) and the account managers (if applicable) will have 6 days in which to resolve the dispute.

**12.2** If the dispute or difference is not resolved under clause 12.1 above either party may give to the other party a written notice of the dispute or difference (a "Dispute Notice"), setting out its nature and such particulars as will be then available to that party. The Dispute Notice will be referred to the Head of Management in Bord na Móna Recycling and to the Head of Management of the Customer (if applicable) for conciliation who will endeavour to resolve the dispute within 5 business days of the service of a Dispute Notice, each of the parties will prepare and deliver to each other a form of statement setting out their position on the matter in dispute and their reasons for adopting such position. Failing agreement between such persons within a further 14 days after the date of the Dispute Notice the matter will be dealt with in accordance with the provisions of Clause 15.1.

**13. TERMINATION**

**13.1** The Contract shall commence with effect from the Commencement Date and shall continue in force for the Term, unless terminated earlier in accordance with the provisions of clauses 8.10 or 13.2. Unless a party gives at least one months written termination notice to the other, on or prior to the expiry of the Term, this Contract shall be deemed to continue to automatically renew for further periods of twelve months and shall continue in force until terminated by either party giving one months' written termination notice to the other on or prior to the expiry of any such renewed term.

**13.2** In the event of the Customer committing any breach of any term or provision of the Contract (including, for the avoidance of doubt, these Conditions), going into liquidation having a receiver, examiner or other similar officer appointed over the whole or any part of its assets, becoming bankrupt or insolvent or granting any trust deed or entering into any composition or similar arrangement with its creditors, or if any circumstances arise which, in the sole opinion of Bord na Móna Recycling render any of the foregoing likely to occur, then Bord na Móna Recycling shall be entitled, without notice and without any liability whatsoever, to terminate the Contract forthwith and to enter the Customer's premises for the protection, removal, realization and disposal of any of the Equipment, title in which shall not have passed to the Customer in accordance with the terms of these Conditions.

**13.3** Bord na Móna Recycling reserves the right at any stage during the Term, or any extended Term, to terminate the Contract for any reason on the giving of one month's written notice to the Customer.

**13.4** Upon termination of this Contract, by either party, any amounts owing to Bord na Móna Recycling shall immediately become due and payable by the Customer. On termination of the Contract, Bord na Móna Recycling shall have the right to remove Equipment without prior consultation with the Customer and without any liability arising out of such removal.

**13.5** At the end of each calendar year, Bord na Móna Recycling shall calculate the total savings received by the Customer as a result of any promotional benefits, discounts or financial rewards provided by Bord na Móna Recycling to the Customer during the Term (a "savings Statement"). Upon termination of this Contract by the Customer during the Term, or any renewed term, the Customer hereby agrees to refund to Bord na Móna Recycling the total of any promotional benefits, discounts or financial rewards provided by Bord na Móna Recycling to the Customer during the Term prior to the termination of the Contract. The Parties thereby agree that amount reflected in the Savings Statement is a genuine pre-estimate of Bord na Móna Recycling' likely actual losses as a result of the Termination of the Contract.

**13.6** Upon termination of this Contract, by either party, any risk assessments carried out by Bord na Móna Recycling on the Customer's behalf in relation to the Customer's Site(s) shall be revoked.

**13.7** The termination of this Contract shall be without prejudice to any rights or obligations which shall have accrued before termination, including any remedy available in respect of a breach of this Contract.

**14. ENTIRE AGREEMENT**

**14.1** This Contract constitutes the entire agreement and understanding between the parties with respect to the Services, and except as expressly provided, supersedes all prior representations, writings, negotiations or understandings with respect to that subject matter.

**14.2** No variation this Contract shall be effective unless it is made in writing, signed by Bord na Móna Recycling and notified to the Customer. Any amendment to these Conditions will take effect and will bind the Customer three days after notice of the amendment has been sent to the Customer. For the avoidance of doubt, express acceptance by a Customer is not required.

**15. GENERAL**

**15.1** The construction validity and performance of the Contract shall be governed by and construed in accordance with the laws of Ireland and for all matters arising under, out of or in connection with the Contract the parties hereby submit to the exclusive jurisdiction of the Irish Courts.